

Memorandum



Date: September 15, 2004.

To: Honorable Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

RCA Add-On
Agenda Item No. 3 (C)

Subject: Owner Controlled Insurance Program for the Performing Arts Center
Contract No. 170, Supplemental Agreement No. 2

RECOMMENDATION

It is recommended that the Board of County Commissioners approve the attached Supplemental Agreement No. 2 to Contract No. 170 with Marsh USA Inc., the County's broker for the Owner Controlled Insurance Program for the Performing Arts Center (PAC).

This Supplemental Agreement provides for an increase of \$3,423,859 to the Contract to cover worker's compensation and general liability insurance premiums, loss control fees, excess liability insurance premiums and broker fees. This Supplemental Agreement also increases the Contract by a not-to-exceed amount of \$1,000,000 for the renewal of worker's compensation and general liability insurance premiums and loss control fees from October 15, 2005 to December 31, 2006.

It is further recommended that the provisions of Resolution R-377-04 concerning reconsideration of contract award be waived.

BACKGROUND

The Owner Controlled Insurance Program (OCIP) provides that the project owner, Miami-Dade County, purchase the worker's compensation and general liability insurance for the PAC project covering the County, the Construction Manager and sub-contractors. The OCIP is anticipated to provide savings to the County over the traditional method of requiring the contractors to provide their own insurance. The Program also provides the opportunity for greater participation by small and minority firms that might otherwise be prohibited from participating due to the limits of liability required.

The renewal of this Program was anticipated and budgeted within the additional \$67.7 million approved by the Board on July 27, 2004 under the County's restructuring plan (Resolution No. R-1021-04). Insurance companies issue quotes as close to the renewal date as possible, hence this item could not be presented to the Board with the other Performing Arts Center-related items in July 2004.

On January 21, 1999, the Board approved Resolution No. R-93-99 authorizing award of Contract No. 170 to Marsh USA Inc. (formerly J&H Marsh & McLennan, Inc.) to provide broker services for the OCIP. The estimated not-to-exceed premium was \$4,550,000 for the 39 month anticipated project term with an available contingency fund in the amount of \$557,000. This resolution also included broker

service fees for 39 months. Due to Project delays, the premium to renew the OCIP beginning October 15, 2003 to October 15, 2004 exceeded the above not-to-exceed premium of \$4,550,000.

On October 7, 2003 the Board approved Supplemental Agreement No. 1 (Resolution No. R-1082-03) which authorized an increase to the Contract to cover worker's compensation and general liability insurance premiums and loss control fees in the amount of \$1,819,216 (\$3,732,676 estimated annual premium less credit of \$1,913,460 for the period of time between the inception date of July 15, 2000 and the commencement of construction on October 21, 2001). The increase to cover the insurance premium does not take into consideration use of the available contingency funds (\$557,000) which need to remain in place for future provisions including extended time, additional broker services and/or an increase in premium due to increased payroll.

Detail of Supplemental Agreement No. 2

Marsh USA Inc. attempted to renew the existing OCIP through Project completion. However, the current carrier, St. Paul/Travelers insurance company, would only renew for one year due to insurance market conditions. Marsh USA Inc. contacted other carriers who declined to quote this program since the Project is approximately 60% completed. As reported to the Board last year, the structure of the program effective October 15, 2003 was changed to a retrospective rating plan. The insurance premiums under a retrospective rating plan will vary depending upon the loss experience on the Project. Supplemental Agreement No. 2 increases the total Contract amount paid by \$3,423,859 as illustrated in Table A, below. Based on current payroll, the insurance premiums are estimated to be \$2,738,477 for the October 15, 2004 through October 15, 2005 period. If the Project's excellent loss experience continues, premium dollars will be refunded. Based on the loss experience for the October 15, 2003 to October 15, 2004 program, the County is anticipating a refund of approximately \$448,725 in the second quarter in 2005 when losses have been fully processed.

In addition, Marsh USA Inc. successfully negotiated the excess liability premium (\$362,300) through Project completion, which covers the period from September 26, 2004 through December 31, 2006. This Supplemental Agreement also includes Marsh USA Inc.'s administration fee (\$323,082) through Project completion, which covers September 1, 2004 to December 31, 2006. As the Board is aware, the Project completion date is August 4, 2006. Any excess premiums paid to Marsh USA Inc. will be refunded if the Project ends earlier than December 31, 2006.

Table A		
Type of Insurance	Premium/Fee	Term
Worker's Compensation and General Liability	\$2,569,348	10/15/04-10/15/05
State of Florida Worker's Compensation Assessment	\$61,129	10/15/04-10/15/05
Loss Control Service Fees	\$108,000	10/15/04-10/15/05
Subtotal	\$2,738,477	
Excess Liability (Umbrella Insurance)	\$362,300	9/26/04-12/31/06
OCIP Administration provided by Marsh	\$323,081.92	9/26/04-12/31/06
Total	\$3,423,858.90	
Possible Refund	(\$448,725)	Marsh will not return monies until an audit is completed (6 months after October 15, 2004)
Total Cost for Supplemental	\$2,975,133.90	

As stated above, Marsh USA Inc. was unable to find an insurance carrier to renew the Project's worker's compensation and general liability insurance beyond October 15, 2005. However, Marsh USA Inc. estimates that the final premium will be approximately \$900,000. This is dependent on the Project's continued excellent loss ratios and the accuracy of the payroll estimates for the final year of construction. Therefore, a not-to-exceed amount of \$1,000,000 was included in this Supplemental Agreement to cover those insurance premiums and loss control services through Project completion.

Possible Savings

As stated above, the OCIP is anticipated to provide savings to the County over the traditional method of requiring the contractors to provide their own insurance. The Construction Manager has included in its original contract price a guaranteed savings of \$5,151,000, which has been already realized. The current total savings is estimated at \$10,568,000, \$5,417,000 above the guarantee. These additional dollars will not be fully realized until a final audit is completed after Substantial Completion of the Work. That audit will determine the actual insurance costs for the Project.

A handwritten signature in black ink, appearing to read "Lisa Johnson", written over a horizontal line.

Assistant County Manager



MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: September 21, 2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

☒

"4-Day Rule" ("3-Day Rule" for committees) applicable if raised

☐

6 weeks required between first reading and public hearing

☐

4 weeks notification to municipal officials required prior to public hearing

☐

Decreases revenues or increases expenditures without balancing budget

☐

Budget required

☐

Statement of fiscal impact required

☐

Bid waiver requiring County Manager's written recommendation

☐

Ordinance creating a new board requires detailed County Manager's report for public hearing

☐

Housekeeping item (no policy decision required)

☐

No committee review

Approved _____ Mayor

Agenda Item No. _____

Veto _____

Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF SUPPLEMENTAL AGREEMENT NO. 2 TO CONTRACT NO. 170 WITH MARSH USA INC., FOR THE OWNER CONTROLLED INSURANCE PROGRAM FOR THE PERFORMING ARTS CENTER, WAIVING THE PERIOD FOR BOARD RECONSIDERATION, AUTHORIZING THE COUNTY MANAGER TO EXECUTE THE SUPPLEMENTAL AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the execution of Supplemental Agreement No. 2 to Contract No. 170 with Marsh USA Inc., in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County and to exercise any other rights contained therein. This Board waives the requirements of Resolution No. 377-04 for this Supplemental Agreement No. 2.

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The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson	
Katy Sorenson, Vice-Chairperson	
Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorin D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of September, 2004. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. GBK

By: _____
Deputy Clerk

MIAMI-DADE COUNTY, FLORIDA

SUPPLEMENTAL AGREEMENT NO. 2

Contract Number: **170 - executed February 1, 1999; R-93-99**

Contract Title: **Owner Controlled Insurance Program (OCIP) for the Performing Arts Center (Broker Services)**

Contractor: **Marsh USA Inc
1560 Sawgrass Corporate Parkway
Suite 300
Sunrise, FL 33323**

In accordance with the above referenced Contract, this Supplemental Agreement No. 2, when properly executed, shall become effective on September 1, 2004, becomes a part of the County's Contract No. 170 and incorporates the following:

1) Appendix B, Price Schedule, Item 3 shall be amended to include the following:

The cost is hereby increased by \$3,423,859 to cover:

- Worker's Compensation, General Liability Insurance Premiums and Loss Control Fees effective October 15, 2004 to October 15, 2005;
- Excess Liability Premiums effective September 26, 2004 to December 31, 2006; and
- Broker Fees (as specified in Appendix B, Price Schedule, Item 1, Broker Services) from September 1, 2004 to December 31, 2006.

Additionally, the cost is further increased by an amount not-to-exceed \$1,000,000 to cover:

- Worker's Compensation, General Liability Insurance Premiums and Loss Control Fees effective October 15, 2005 to December 31, 2006.

2) Add the following articles into the Contract:

ARTICLE 37. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 38. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission

or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 39. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 40. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

All terms, covenants and conditions of the original Contract and Supplemental Agreement No. 1 shall remain in full force and effect, except to the extent herein amended.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement No. 2 to County Contract No. 170 effective as of the date herein above set forth.

Contractor

Miami-Dade County

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest: _____

Attest: _____

Corporate Secretary

Clerk of the Board

Corporate Seal

Approved as to form
and legal sufficiency

Assistant County Attorney